

high-capacity network¹² Indeed, even when AT&T has self-deployed fiber transport rings, it remains generally dependent upon the ILECs both to provide local loops and to provide transport to aggregate traffic from low demand central offices to hubs where the fiber ring is deployed¹³ The result is that the lion's share of AT&T's access dollars go to the Bells¹⁴

36. Moreover, AT&T's opportunities to expand its use of facilities-based alternatives are severely limited. **As** explained in the separate declaration of Ken Thomas, only a small fraction of the buildings where AT&T currently purchases special access have sufficient demand that it would be even theoretically feasible to consider the deployment of alternative facilities. And even then, AT&T, as well as other CLECs, are often unable to secure the necessary rights-of-way, or convince customers to switch away from ILEC-provided loops.
37. Nor, as Mr. Thomas explains, can AT&T turn to other CLECs, because they too have established alternative facilities to only a small fraction of buildings. AT&T has contractual arrangements with virtually all of the major CLECs that offer facilities-based access services, such as MFS/WorldCom, Adelphia, and Time Warner. These CLECs, however, can provide access to only a small number of additional buildings nationwide.¹⁵

¹² See Comments of AT&T Corp., CC Docket No. 01-338, at 148-58 (filed Apr. 5, 2002) ("AT&T Triennial Review Comments"); Reply Comments of AT&T Corp., CC Docket No. 01-338, at 179-87, 257-67 (filed July 17, 2002) ("AT&T Triennial Review Reply Comments").

¹³ See AT&T Triennial Review Comments at 149-50; AT&T Triennial Review Reply Comments at 294-96.

¹⁴ See AT&T Triennial Review Reply Comments, Pfau Reply Dec. ¶ 26 n.10.

¹⁵ See Thomas Dec. ¶¶ 6-7

Further, even where AT&T has a contractual arrangement with a CLEC, AT&T often cannot use that CLEC to provide access.¹⁶

B. The Transmission Facilities Used To Provide Special Access Services Have Monopoly Characteristics And Are Protected By High Entry Barriers.

38. The record from the Triennial UNE Review Proceeding demonstrates that, because of basic economic and network engineering considerations, competitors will be able to deploy alternative facilities in only limited circumstances. Loop and transport facilities are characterized by substantial economies of scale and sunk costs. Thus, in most instances, replicating incumbent transmission facilities would be economically wasteful. And even in those few instances where self-deployment can be economically justified, barriers to entry -- such as the inability to obtain necessary rights-of-way in a timely fashion -- often prevent competitive deployment of facilities.
39. *Transmission Facilities Are Characterized By Substantial Economies Of Scale.* We understand that most of the cost of deploying loops, including “high capacity” loops, is in the supporting structures, placement, rights of way, and access to buildings, and not in the conductors (fiber strand or copper wires) themselves. The costs of the actual conductor -- be it copper or fiber -- represent only a small portion of the overall deployment cost.

¹⁶ As Mr. Thomas explains (¶¶ 8-11), many CLECs have overstated the extent to which they have buildings “on-net,” most of the major CLECs that provide alternative access have gone bankrupt, and capacity on wholesalers’ networks is also often very expensive, because wholesalers typically price their services just under the price umbrella of the Bells’ special access services

Because the costs of supporting structures are relatively insensitive to the number of wires or fiber deployed, the Bells enjoy substantial economies of scale ¹⁷

40. Dedicated transport is also characterized by substantial economies of scale and scope.’’

Not only do the Bells have fiber interconnecting virtually all of their central offices (either directly or indirectly), they also generally deployed dark fiber capacity at the time of the initial facility construction, so they can dramatically increase lit capacity on most routes simply by adding or upgrading the terminating electronics at relatively small incremental costs (and certainly at a trivial cost compared to new construction). Thus, even on specific, high-demand point-to-point routes, a CLEC cannot hope to achieve the per-unit cost of the Bells’ transport

41. *Transmission Facilities Are Characterized By Substantial **Sunk** Costs.* The difficulties in self-deploying transmission facilities in competition with incumbents are compounded by the sunk character of the costs of building loop and transport facilities. An investment in an asset is sunk if, once made, it cannot be recovered by removing the asset from service. Invested capital funds spent on trenching, structure, and rights of way for a loop clearly fall into this category. It is basic economics that the need to incur significant sunk costs to deploy facilities that have substantial scale economies can result in significant entry barriers.

¹⁷ AT&T Triennial Review Reply Comments at 148-60

¹⁸ *Id.* at 148-52

42. When substantial sunk investments must be made, an entrant may be reluctant to undertake an investment if there is a material risk that the costs of the investment will not be recovered. As one of us has previously explained:

The reasoning for this is straightforward. If costs are sunk, the potential entrant knows that it will not be able to recover its costs if it is unable to attract sufficient revenues to recover the sunk costs. At the same time, because of economies of scale, the new entrant will incur higher per-unit costs, making it difficult for it to win sufficient customers away from the incumbent. Further, because the incumbent has already sunk its costs and has very low marginal costs, there is a significant threat that the incumbent could drop its prices in response to competitive inroads at any time down to its short run costs.¹⁹

43. There is broad agreement among economists that industries characterized by *both* declining average costs *and* sunk costs have the properties of natural monopolies protected by economic entry barriers.” Thus, in such an industry, even if an entrant could reasonably approximate the scale economies of the incumbent, the threat that the incumbent would respond with prices close to the short term variable costs, thereby making it impossible for the entrant to recover sunk costs, may deter all but targeted, limited entry. The Commission has recognized this point.²¹

¹⁹ AT&T Reply Triennial Reply Comments, Willig Reply Dec. ¶ 21

²⁰ W. Baumol, J. Panzar, and R. Willig, *CONTESTABLE MARKETS AND INDUSTRY STRUCTURE* (1982); D. Carlton and J. Perloff, *MODERN INDUSTRIAL ORGANIZATION* (3rd ed. 2000).

²¹ See *Section 257 Report*, 12 FCC Rcd. 16802, ¶ 18 n.48 (1997) (“If entry into an industry requires large sunk costs, the firm that incurs these sunk costs first (the incumbent) can have a tremendous advantage. Potential new entrants may realize that any large scale facilities-based entry into the market will probably force prices to decrease and those prices may be in fact below the point necessary to recover the sunk cost investment. As a result, facilities-based entry will be deterred.”); see also *MCI-BT Merger Order*, 12 FCC Rcd. 15351, ¶ 162 (1997) (same).

44 *ILECs Have Enormous First-Mover Advantages.* Finally, the Bells enjoy first mover advantages over any CLEC that further compound the entry risks and create disincentives to entry. As first movers, the Bells received rights-of-way from local governments for underground cables, telephone poles and wires with only minimal transactions costs, because potential telecommunications customers in the neighborhood or municipality otherwise would not receive any telecommunications services. Similarly, building owners and landlords welcomed and accommodated Bells that were the only viable provider of telecommunications facilities to their properties. As subsequent entrants, CLECs, on the other hand, generally cannot rely on existing facilities, rights of way, or conduit.²² Rather, a CLEC must construct the loops and transport from scratch, which takes many months of pre-construction while, at the same time, it tries to negotiate the necessary rights of way and construction permits from the municipality and negotiate the terms of building access from the landlord.²³ Rather than welcoming additional competition, these entities often view CLEC requests for rights-of-way as a nuisance. Retail customers understandably do not wish to wait the many months necessary for the competitive carrier to negotiate through this thicket.²⁴ Further, whereas the Bells entered the pertinent markets free of competitors and, as a result, have facilities in place to serve all customers, CLECs must often commit to deployments based on projections or speculation that there will be demand for such facilities thereby facing higher market risk and thus potentially higher cost of capital.

²² AT&T Triennial Review Reply Comments at 164-65, 171-77

²³ *Id.*

²⁴ *Id.* at 171-73.

45. CLECs must also incur substantial marketing costs to attract customers now served by the RBOCs. Unlike the RBOCs, which started with no competition, CLECs must expend significant sums to market their services, develop a brand and convince consumers to switch from their incumbent provider.” Thus, CLECs need to spend much more per customer on marketing efforts to win customers away from the RBOCs, and generally also have to underprice the RBOCs to obtain business. “[E]ntrants must entice customers with a lower price and/or incur a greater selling expense per unit than the incumbent(s). . . . **As** a result, . . . an entrant must incur promotional expenditures to overcome the incumbent’s existing market dominance. Such expenditures are unrecoverable by the entrant in the event of market exit and may constitute, therefore, a sunk cost impediment to entry.”²⁶ For all of these reasons, there is no sustainable basis to conclude that new entry can be relied upon to constrain the RBOCs’ special access rates any time soon.

V. THE RBOCS HAVE THE ABILITY AND INCENTIVE TO USE THEIR MARKET POWER TO HARM USERS OF SPECIAL ACCESS AND STIFLE COMPETITION IN ADJACENT MARKETS.

46. **As** discussed above, the RBOCs have used their Commission-authorized pricing flexibility over special access to collect billions of dollars in supracompetitive profits. These rents are an unnecessary transfer of resources to the RBOCs from their customers and, ultimately, from consumers. The deadweight economic loss that results from this overpricing and the resulting suppression of demand for special access services and the

²⁵ *UNE Remand Order*, 15 FCC Rcd. 3696 ¶ 87 (1999).

²⁶ *See First Video Competition Report*, 9 FCC Rcd. 7442, ¶¶ 39-40 (1994)

services they make possible, relative to the level of demand that would be forthcoming at competitive prices, is undoubtedly significant as well

47. But this significant and unnecessary drain on the economy is only one of the manifestations of the RBOCs' special access dominance. Basic economics predicts that the RBOCs will have the incentive and ability to use their control over essential last mile facilities to impede competition in a number of adjacent product markets.

A. **Strict Regulation Of Special Access Rates Is Necessary To Protect Facilities-Based Local Competition.**

1. **The RBOCs' Inflated Prices For Special Access Have Erected A Major Barrier To Entry By Potential Facilities-Based Competitors Into Retail Markets For Local Telephony.**

48. High special access rates inhibit the entry of CLECs into local markets using their own facilities. Special access services are critical to local competition because the current regulatory regime does not allow CLECs to substitute combinations of loop and transport UNEs. As AT&T has explained, the Commission has permitted incumbents to impose "use" and "commingling" restrictions on combinations of unbundled loops and transport facilities that have largely prevented CLECs from converting special access services into unbundled network elements.²⁷ We understand that over 98% of AT&T's facilities-based *local* service for business customers using incumbent facilities of DS-1 level or higher is provided over incumbent special access services, not UNEs.²⁸

²⁷ Comments of AT&T Corp., CC Docket No. 96-98, at 18-23, (filed April 5, 2001) ("AT&T Use Restriction Comments"); AT&T Triennial Review Reply Comments at 283-300.

²⁸ *See* AT&T Triennial Review Reply Comments, Pfau Reply Dec. ¶ 26 n.10.

49. Without access to cost-based loop-transport UNE combinations known as EELs, CLECs depend on the availability of reasonably priced special access “services” to deploy CLECs’ own switches and other local facilities. CLECs lack the geographically concentrated customer bases that the ILECs enjoy. Thus, to deploy switches with the same capacity (and, therefore, scale economies) as the ILECs, CLECs must be able to serve a more geographically dispersed customer base. Special access provides a necessary means to link potential customers to CLEC switches.
50. But, as explained above, special access rates are typically twice (and sometimes three or four times) the TELRIC rates for the comparable UNEs. And, critically, because TELRIC measures the incumbent’s true economic costs, the fact that access rates are typically twice TELRIC means that the CLEC’s cost of accessing the underlying facilities is usually twice (or more) that of the incumbent. Effective facilities-based competition is particularly difficult and unlikely under these conditions.
51. More subtly, CLECs need access to ILEC transmission facilities as a “bridge” mechanism to self-deploying their own transmission facilities in the few instances where it might be economic to do so. Because most of the investment in transmission facilities is likely to be **sunk** once made, competitive carriers are unlikely to be willing to build transmission facilities “on spec” and hope that customers will show up. Rather, potential entrants need some reasonable assurance that there is sufficient demand to support a deployment of transmission facilities. Customers, on the other hand, may be unwilling to commit to service and then wait the many months (or years) needed for the CLEC to obtain the necessary rights-of-way and build transmission facilities.

52. Further, the substantial economies of scale of transmission facilities render uneconomic the construction of a competitive carrier's own transmission facilities unless the carrier can aggregate traffic from numerous LSOs to a hub, and then place the aggregated traffic onto its own transport facilities at the hub.²⁹ Without access to EELs at TELRIC rates, CLECs face a dilemma. They can either pay excessive special access rates to reach those additional LSOs, thereby incurring excessive costs of purchased inputs from the RBOCs and burdening themselves with a cost structure that precludes them from competing effectively with the ILECs, or they can attempt to build fiber facilities with enormous excess capacity and substantial up-front costs that would dwarf the reasonably anticipated revenue stream. In either case, these costs – which the Bells do not face – impede effective entry into retail markets for local telephone services, and lessen the ability of competitive providers of telecommunications services to constrain the market power of the RBOCs.

2. The RBOCs' Ability To Engage In Targeted Pricing And Customer Foreclosure Also Acts as a Deterrent Against Facilities-Based Entry Into The Provisioning Of Special Access Services.

53. The existing rules not only enable ILECs to charge excessive prices for critical inputs that serve as a necessary bridge or complement to facilities deployment, thereby harming competition in the retail market for local telephony, but they also give RBOCs the ability to deploy discriminatory contract tariffs that can target any attempted competitive inroads into the intermediate market for special access. In particular, the existing pricing flexibility rules permit the RBOCs to price discriminate in a manner that may further

²⁹ See AT&T Triennial Review Comments at 136-38; AT&T Triennial Review Reply Comments at 251-52.

stymie entry or induce exit of efficient competitors and to use long term contracts to deny competitors access to the traffic necessary to justify facilities deployment.

54. **Targeted Pricing.** It has been noted that the RBOCs' excessive special access rates seemingly create a "price umbrella" over those CLECs that actually deploy alternative facilities. While this may be true for the few existing facilities-based CLECs, the presence of such an umbrella could offer little comfort to potential entrants. To the extent that an RBOC can price discriminate under the existing pricing rules, it will be able to lower prices selectively—*i.e.*, to only those customers that could potentially be served by the new entrant—while keeping prices high for all other customers. For example, if a competitive carrier were to deploy transport facilities between two points, an RBOC could respond by lowering prices on that route but not any others. Although such responses may, of course, occur in competitive environments, here it has the undesirable effect of prolonging market dominance by a firm that was able to make a large portion of its sunk investment in a regulated regime.
55. Thus, the RBOCs' option of cutting prices in response to facilities-based entry, coupled with the high degrees of scale economies, sunk costs, and second-mover disadvantages add up to a powerful deterrent to future competitive entry, unless the new entrant has substantial cost (*i.e.*, technology) or other advantages over the incumbent Companies that would depend on the RBOC for critical inputs would, if anything, be even more unwilling to enter the market, because the likelihood of losses would be further elevated by the unreasonable prices that they would be required to pay to the RBOC for those inputs.

56. The Commission in its Pricing Flexibility **Order** was “concerned” about this: “Phase I relief, which enables [the Bells] to offer contract tariffs to individual customers, [could permit the Bells] to engage in exclusionary conduct.”³⁰ The Commission observed that, absent regulation, the Bells had the ability to “reduce prices in the short run and forgo current profits in order to prevent the entry of rivals or to drive them from the market.”³¹ Because the Bell almost always enjoys substantial advantages over the CLEC in terms of per-unit costs, the Bell can reduce its rates to a point between its own unit cost and that of the CLEC at any time. As a result, the RBOC can deter or drive any CLEC from the market to the extent the CLEC’s business plan is based on being able to charge prevailing supracompetitive access prices.”
57. The Commission believed that it could protect against these concerns by granting downward pricing flexibility only where CLECs had made “substantial sunk investment.”³² The Commission reasoned that where investment in alternative facilities had been sunk, the Bells would have no incentive to engage in exclusionary behavior because there would be little prospect of driving the CLECs out of the market. “If a competitive ILEC has made a substantial sunk investment in equipment, that equipment remains available and capable of providing service in competition with the incumbent, even if the incumbent succeeds in driving that competitor from the market”³⁴

³⁰ *Id.* ¶ 79.

³¹ *Id.*

³² *See* AT&T Triennial Review Reply Comments, Leshner Reply Dec. ¶ 28

³³ *Pricing Flexibility Order* ¶ 80.

³⁴ *Id.*

58. The Commission's reasoning was too narrow. The sunk character of much of the investment in a competitive carrier's facilities does not eliminate the rationale for acting aggressively against an entrant when such aggressive behavior can reduce the likelihood of future additional entry in the same market or other markets. The economic literature cited by the Commission in its order pertaining to the incentives for "predatory" conduct focuses on situations where only entry in a single market by a single competitor is at stake. The incumbent's incentives, however, can change dramatically when multiple markets or entry by multiple carriers are involved. There is now a substantial economics literature demonstrating that an incumbent may want to use "predatory" actions (for example, price below some pertinent measure of cost) to establish a reputation for "toughness" and thereby dissuade subsequent potential entrants from invading its turf.³⁵ Thus, even though such conduct may be costly in the short run, it may nevertheless be a profitable business strategy if it lessens likelihood of entry over a long run.

59. The Bells' expert, Alfred Kahn, has agreed:

The extent to which markets are effectively contestable cannot logically be independent of the ways in which the rich, dominant incumbents respond or have responded in the past to previous entrants. As my colleague Irwin Steltzer once put it, a no trespassing sign alone may not deter a hiker from walking on another's property, but when, just beyond the sign, the field is littered with the bodies of previous trespassers--and all the more so when other fields, owned by other people, are similarly littered--the lesson is likely to sink in. And no static calculus of the benefits and costs of such

³⁵ See X. Vives, OLIGOPOLY PRICING 291 (1999); D. Fudenberg and E. Tirole, Noncooperative Game Theory, in 1 HANDBOOK OF INDUSTRIAL ORGANIZATION 320-322 (R. Schmalensee and R. Willig, eds. 1989); J. Ordover and G. Saloner, Predation, Monopolization and Antitrust, in 1 HANDBOOK OF INDUSTRIAL ORGANIZATION 545-562 (R. Schmalensee and R. Willig, eds. 1989); D. Kreps, and R. Wilson, *Reputation and Imperfect Information*, 27 J. OF ECON. THEORY, 253-79 (1982); P. Milgrom, and J. Roberts, *Predation, Reputation and Entry Deterrence*, 27 J. OF ECON. THEORY 280-512 (1982).

disciplinary action in an individual case, with the benefits heavily discounted because of their futurity and uncertainty, can suffice to dispel the possibility that such a policy will recommend itself to the incumbents, and end up producing a radically transformed, highly concentrated industry, far less competitive in its pricing behavior.³⁶

60. *Customer Foreclosure.* The Commission has recognized a related concern that the RBOCs can use pricing flexibility to prevent facilities competition by engaging in customer foreclosure. In particular,

[a]n incumbent can forestall the entry of potential competitors by “locking up” large customers Specifically, large customers may create the inducement for potential competitors to invest in sunk facilities To the extent the incumbent can lock in the larger . . . customers whose traffic would economically justify the construction of new facilities, the incumbents can foreclose competition for the smaller customer as well.³⁷

61. The Commission’s fears were well-justified from the perspective of sound economics. And there is now evidence that the pricing flexibility regulations that the Commission adopted in 1999 are not adequate to prevent this type of exclusionary conduct. As AT&T explains in its Petition, the RBOCs are effectively impelling carriers to enter into optional pricing plans (“OPPs”) that tie up significant portions of the market. The RBOCs have threatened IXCs with even higher rates unless they sign long-term contracts with sizable penalties for early termination
62. We understand that virtually all of these plans require AT&T to commit to certain levels of annual purchases to obtain the discounts. As a result, if AT&T were to migrate traffic to its own or RBOC competitors’ facilities, it would lose the OPP discounts (typically on

³⁶ Alfred E. Kahn, *The Macroeconomic Consequences of Sensible Microeconomic Policies*, at 14-15 (N/E/R/A Reprint, 1984)

³⁷ *Pricing Flexibility Order* ¶ 79

a *regionwide* basis), which in most cases would dwarf whatever savings AT&T could achieve by using competitive alternatives. Indeed, we understand that some RBOCs have insisted on specific penalties for migrating traffic to competitors. Even if more broadly available alternatives were to eventuate, AT&T could not take advantage of them in many cases, because most of the OPP plans impose substantial penalties for early withdrawal, which would negate any savings.

63. In short, as the Commission recognized in the *Pricing Flexibility Order*, absent effective competition or regulation, the RBOCs have the ability to engage in pricing practices that make the technology-driven barriers to entry even more effective in working against new entrants. The RBOCs can ward off the threat of competitive entry by “locking up” large customers by offering them volume or term discounts below entrants’ costs – thereby deterring prospective entrants, for whom service to large customers may have been the inducement necessary to invest in the necessary sunk facilities. And the evidence indicates that the RBOCs are doing precisely that.

B. Regulation Of Special Access Continues to be Necessary To Protect Long Distance Competition.

64. As the RBOCs win interLATA authority, they will have increasing incentive to use their market power in the provision of special access to disadvantage anticompetitively their long distance rivals. Access is a “necessary input for long-distance service” and access charges constitute a sizeable percentage of the overall cost of long distance services. This gives the RBOCs the opportunity to undertake a profitable strategy of raising rivals’ costs.

65. More specifically, once RBOCs are permitted to provide in-region long-distance service, they will compete with the IXC's that depend on them for the provision of terminating and originating access. This provides the RBOCs with the further opportunity and incentive to weaken the IXC's competitive position by overcharging them for access. At the same time, the increase in access charges will provide the RBOCs' long-distance affiliates with a strategic cost advantage wholly unrelated to any efficiencies realized by the affiliates. The source of these cost and competitive advantages is the difference between the true cost of access, as measured by its TELRIC, and the distorted rate that the RBOCs can charge to its access customers. This cost advantage enables the RBOC not only to charge monopoly prices for access, but to set its long-distance rates at or below its access prices.³⁸
66. If access prices are above the costs that the RBOC actually incurs to provide access, the RBOC can use the cost differential between what its rivals pay them for these elements and the lower economic cost that it incurs as a vertically integrated company to gain an advantage in the provision of bundled services. The RBOC might create an anti-

³⁸ The Commission has long recognized that, "[a]bsent appropriate regulation, an incumbent LEC and its interexchange affiliate could potentially implement a price squeeze once the incumbent LEC began offering in-region, interexchange toll services." *Access Reform Order*, 12 FCC Rcd. 15982 ¶ 277 (1997); *see also id.* ¶ 278 (incumbents have the "incentive and ability to engage in a price squeeze"). As the Commission has explained, "[t]he incumbent ILEC could do this by raising the price of interstate access services to all interexchange carriers, which would cause the competing in-region carriers to either raise their retail rates to maintain their profit margins or to attempt to maintain their market share by not raising their prices to reflect the increase in access charges." *Id.* ¶ 277. Alternatively, "the incumbent LEC could also set its in-region, interexchange prices at or below its access prices. Its competitors would then be faced with the choice of lowering their retail rates for interexchange services, thereby reducing their profit margins, or maintaining their retail rates at the higher price and risk losing market share." *Id.*

competitive price squeeze by charging IXCs a greater margin for access than the RBOC earns on its own integrated end-user services, and thereby deter efficient IXC supply. This strategy may be profitable to the RBOCs, while harmful to consumers, and can weaken the ability of IXCs to compete for local exchange business while maintaining the monopoly hold that the RBOCs have over that business.

67. Such ILEC tactics harm not only IXCs, but also telecommunications consumers. As long as the RBOC continues to charge and collect excessive access prices, it is the end users who will continue to pay for them in one way or another. One avenue is simply the passed-along amount that the end-user pays to the IXC, so that the IXC can in turn pay it to the RBOC. Another avenue is the above-cost price for long-distance charged to the end-user by the RBOC.
68. Consumers are also harmed because an anticompetitive price squeeze impairs the IXC's ability to compete for the provision of bundled offerings that contain both a local and long distance component. By maintaining above-cost access charges, the RBOC can continue to apply strong pressure on IXCs, who must charge customers long-distance prices that reflect the excessive charges. By charging prices for its long-distance customers that do not reflect all of the artificially elevated access prices, the RBOC can divert substantial business from the IXCs to itself.
69. The evidence since 1999 confirms that the Bells not only can undertake such anticompetitive price squeezes, but may have actually done so. For example, AT&T has shown that SBC maintains intrastate access rates in Texas of nearly six cents per minute

(originating plus terminating).³⁹ SBC's long distance affiliate, however, offers long distance rates in Texas as low as five cents per minute, as well as a block of 100 minutes for six dollars.⁴⁰ Because providing finished long distance service requires SBC to incur many additional costs (such as the intraLATA transport component, retail and marketing, and back office expenses), SBC's long distance affiliate must be offering retail services that fail to cover SBC's properly imputed costs. For an example that highlights the potential roles of bundling, BellSouth offers an intrastate service in its region called "Fast Packet Option." Under this offer, end users can obtain special access at rates that are lower than those in BellSouth's federal tariffs, but only if the end user agrees to purchase BellSouth's frame relay services as well.⁴¹ As a result, AT&T cannot obtain special access at the "Fast Packet Option" rates and pair that service with its own frame relay services,

VI. CONCLUSION

70. For the reasons stated, the triggers established by the *Pricing Flexibility Order* fail to ensure that, absent regulation, an RBOC granted such flexibility would be unable to exercise market power over the access services for which pricing flexibility is authorized. Instead, the triggers have enabled the RBOCs to reap supracompetitive profits and freed the RBOCs to abuse their control of critical inputs in order to deter efficient entry into the

³⁹ Comments of AT&T Corp., CC Docket No. 00-175, at 4 (Nov. 1, 2001)


⁴⁰ *Id*

⁴¹ Compare BellSouth Telecommunications Inc., Georgia, General Subscriber Service Tariff, Twelfth Revised Page 1, A.40 (Frame Relay Service), with BellSouth Telecommunications, Inc., FCC Tariff No. 1, 6th Revised page 21-1 (Fast Packet Access Services). BellSouth has similar tariffs in each of the states in its region.

access markets and impede competition in long distance markets. Such consequences are plainly contrary to the public interest. We therefore recommend that the Commission subject the RBOCs' special access services to effective regulation that will drive access charges towards cost and constrain exclusionary conduct by the RBOCs.

VERIFICATION

I, Janusz A. Ordoover, declare under penalty of perjury that the foregoing is true and correct. Executed on November 7, 2002.

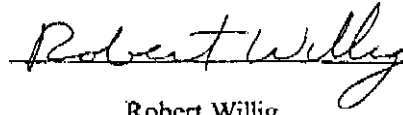


Janusz A. Ordoover

VERIFICATION

I, **Robert Willig**, declare under penalty of **perjury** that the **foregoing is true** and correct.

Executed on October 14, 2002.


Robert Willig